

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARABIEL AVELAR, et al.,

Plaintiffs,

v.

DCFS, et al.,

Defendants.

NO. CV 16-471-VBF (AGR)

ORDER TO SHOW CAUSE ON
OR BEFORE MARCH 31, 2016

On February 23, 2016, Plaintiffs filed a First Amended Complaint. For the reasons discussed below, it appears that judicial immunity shields one of the defendants.

The court therefore orders Plaintiff to show cause on or before **March 31, 2016**, why defendant Commissioner Marilyn Kadding Martinez should not be dismissed from the action.

I.

BACKGROUND

On February 23, 2016, Plaintiffs filed a First Amended Complaint (“FAC”). Plaintiffs are the stepfather and mother of two minor children, D.M and E.M.¹ (FAC ¶¶ 25, 40.) Plaintiffs allege that Defendants acted wrongfully to remove the children from the custody of Plaintiffs.

Among the defendants is Los Angeles County Superior Court Commissioner Marilyn Kadding Martinez. (*Id.* ¶ 18.) Commissioner Martinez issued an order and ignored Plaintiffs’ pleadings and statements at hearings. (*Id.* ¶¶ 45, 56, 58.)

II.

JUDICIAL IMMUNITY

A superior court commissioner is a judicial officer entitled to judicial immunity. See *Franceschi v. Schwartz*, 57 F.3d 828, 830 (9th Cir. 1994).

To the extent Plaintiffs seek monetary damages, “state judges are absolutely immune from liability for their judicial acts.” *Briscoe v. LaHue*, 460 U.S. 325, 334 (1983); *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978). This is true “even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly.” *Id.* Judicial immunity applies when a plaintiff alleges the judge erred or failed to comply with due process. *Id.* at 359-60; *Cleavinger v. Saxner*, 474 U.S. 193, 199-200 (1985). “Nor is judicial immunity lost by allegations that a judge conspired with one party to rule against another party.” *Moore v. Brewster*, 96 F.3d 1240, 1244 (9th Cir. 1996).

Judicial immunity can be overcome only in two circumstances: (1)

¹ Plaintiffs recite the full, unredacted names of the children at least once in the complaint. (Complaint ¶ 25.) It is apparent that they are still minors, for Plaintiffs allege that both were in elementary school in 2013. (See *id.* ¶ 27.) The use of minors’ full names in a non-sealed court filing violates Fed. R. Civ. P. 5.2(a)(3), which permits only the use of the minors’ initials. It is the filer’s responsibility to ensure full compliance with the Rule. Civ. L.R. 5-4.3.2.

1 “nonjudicial actions, *i.e.*, actions not taken in the judge’s judicial capacity,” or (2)
 2 actions “taken in the complete absence of all jurisdiction.” *Mireles v. Waco*, 502
 3 U.S. 9, 11-12 (1991) (per curiam).

4 Plaintiff appears to be suing Commissioner Martinez for acts in her
 5 capacity as a Commissioner. Presiding over court proceedings and issuing
 6 rulings are acts normally performed by a judge in his or her judicial capacity. *Id.*
 7 at 12; *Moore*, 96 F.3d at 1244.

8 Plaintiff also has not alleged any acts by Commissioner Martinez in the
 9 complete absence of jurisdiction. The scope of jurisdiction is interpreted broadly
 10 for purposes of judicial immunity. *Stump*, 435 U.S. at 356.

11 To the extent Plaintiffs seek declaratory or injunctive relief, § 1983 provides
 12 that “in any action brought against a judicial officer for an act or omission taken in
 13 such officer’s judicial capacity, injunctive relief shall not be granted unless a
 14 declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C.
 15 § 1983. The FAC fails to allege facts that show a declaratory decree was violated
 16 or was unavailable.

17 III.

18 ORDER

19 IT IS THEREFORE ORDERED that on or before **March 31, 2016**, Plaintiffs
 20 shall show cause why Commissioner Martinez should not be dismissed from the
 21 action based on judicial immunity.

22 **If Plaintiffs fail to respond to this order to show cause by March 9,**
 23 **2016, then Commissioner Martinez may be dismissed from the action.**

24
 25
 26 DATED: March 1, 2016



ALICIA G. ROSENBERG
 United States Magistrate Judge